THE CORPORATION LAWS OF MEXICO.

A GREAT many changes have been made in Mexican Law by Carranza's strange Constitution of 1917. To a legal mind, or a merely practical mind, it is difficult to discover any improvement and it is easy to discover flaws in great numbers. Any changes that were made were induced by the then overwhelming power of the radicals both in the Mexican Congress and in the army. Since then, there has been no amendment to the New Constitution, but the enforcement thereof has become somewhat lax in many matters and utterly impossible in others.

One of the most striking phases of the New Constitution is the socialistic Article 27 which has done more to hinder friendly relations with the allied powers than all other acts of the Mexican Government combined.

Section 4, regarding corporations, says as follows:

> "Commercial societies from which stock is issued, cannot acquire, possess or administer country property. Societies of this kind which are organized to exploit any kind of manufacturing, mining or petroleum industry or for any other purpose not agricultural, can acquire, possess or administer lands only in the quantities strictly necessary for the establishments or purposes of the societies so formed, and which the Chief executive of the nation or of the States shall fix in each case."

In other words, no corporation or other association in which shares of stock are issued can own lands except what the Governor of a particular state or the President of Mexico wants them to hold. The absolute control of the properties acquirable by a corporation is therefore in the executives of the government. For instance, a corporation is organized for the development of oil or minerals in Mexico. The money invested in this corporation is used to drill wells, build pipe lines, and if organized by a cautious lawyer, permission is obtained beforehand to buy the necessary real property, and such purchase is made at once. But suppose the company wants to expand? Suppose the

terminal facilities are not enough; suppose the acreage of lands upon which pumping-stations are built must be increased; then the arbitrary decision as to whether or not the company shall expand lies with the Governors or the President. It can readily be seen that in case an oil company does not expand it must die When one oil field is exhausted, others must be developed and it matters not how many millions of dollars have been spent in developing the first field or how many leases have been taken on the second field, if the Governor of the particular state decides the oil company shall have no more land, no more land may be bought in fee. Of course, a ninety-nine year lease may be obtained, but leases are arbitrarily declared revisible or void or the land divisible under this same Article 27, into small tracts, and a lease is always inadequate and sometimes difficult to obtain.

Furthermore, under this product of radical legislation, no foreign corporation can acquire any kind of land, tenement or hereditament, without humbling itself as specified in Article 27, Section 1, of the Constitution of 1917, which says:

> "Only Mexicans by birth or naturalization and Mexican associations have the right to acquire dominion of lands, waters and their accessories or to acquire concessions for the exploitation of mines or combustible minerals in the Mexican Republic. The State may concede the same right to strangers if they appear before the Secretary of Foreign Relations and agree to be considered as nationals in respect to such properties and to not invoke for such reason the protection of their governments in so far as pertains to them; under the penalty, in case of breach of such agreement, of losing the property acquired in this manner and such property will escheat to the State. Under no circumstances may foreigners acquire rights to lands and waters in a strip of land along the borders a hundred kilometers wide or in a strip along the coasts fifty kilometers wide."

Of course, by "foreigners" is meant foreign corporations as well as individuals. Americans, in other words, are absolutely forbidden to hold land within one hundred kilometers of the border or fifty kilometers of the seacoast, and they are only allowed to hold land in the interior in case they waive their rights as American citizens and agree to consider themselves Mexicans

as to these lands. The purpose of this clause is obvious. At the time of creating this New Constitution, Carranza's object was to drive all Americans out of Mexico. He planned to close the oil fields and thus aid the German Government; to confiscate all American landed property; and finally to prevent further acquisition by causing American citizens, as such, to waive their rights and submit to the arbitrary despotism of a radical government, frankly, as to a portion, modeled after the Soviet Government of Russia. The difficult part has been that the Government of Carranza was recognized by the United States and corporations do not know their standing since most of the corporation laws of Carranza have not been changed.

Furthermore, it is necessary for the owner of a share in a Mexican corporation which may acquire lands, to waive his rights as an American citizen as to the shares in the same manner as the rule is applied to the grantee of land.

These laws are the new laws. They are the product of the new régime in Mexico, and must not be interpreted as the old laws are interpreted. They do not represent the ideas of a great majority of Mexicans. Fortunately, it is only the foregoing principles that have been changed, and the great body of corporation law, the law or organization, administration and responsibility has not been changed. A great many of the basic principles are similar to the basic principles of Anglo-Saxon corporation law, and almost identical with the provisions of the French and Spanish codes.

A corporation is not a firm, but must be designated by a name denoting, not the names of the associates, but the principal object of the enterprise. The shareholders are liable to no greater extent than the par value of the shares owned, provided that if the name of any individual shareholder is used in the corporate title or denomination with his consent, this shareholder is responsible to the fullest extent, personally, for all the debts of the corporation. Of course, the name of the corporation must be different from the name of any other corporation and *"Sociedad Anonima"* must be added after the name in all cases in which the name is used.

There are two methods of organizing a Mexican corporation.

One by public subscription,[1] and the other by means of two or more persons who appear and actually subscribe at the same time signing the equivalent of a charter or *escritura social.* If it is desired to organize the corporation by public subscription, it is necessary to publish the prospectus, to subscribe the entire amount of capital stock, to hold a general shareholders' meeting at which the constitution or "charter" of the corporation is approved and ratified, and finally to protocolize the action or agreement of the constituting or ratifying general assembly of shareholders and the by-laws of the corporation.[2]

The prospectus of the corporation must be drawn up by the founders and must contain the complete outline of the statutes of the association together with all explanations that are deemed necessary, the demonstration or exhibition of the capital of the company and the proof of the value of such capital, whether it consist of titles, goods or other personal or real property. The capital of the corporation may be subscribed or paid in by one or any number of the contributors. Also the contract or "public" documents must contain the usual requisite of public or constituting documents or charters; as the names and addresses of the incorporators, name of the corporation, duration, description and amount of the capital number of shares, par value thereof, amount paid in, original directors and officers and powers thereof, amount of sinking fund and division of profits, if any, and number of shares reserved for the incorporators, methods of dissolution and manner of appointing receivers.

The names and addresses of the subscribers of shares must be affixed to the prospectus, together with the number of shares subscribed to (number in letters), date and agreement to the effect that the subscribers know and accept the statutes of the corporation, and all must be witnessed by two witnesses.

This, or course, must all be done before the actual organization takes place. In addition to the foregoing, all of the capital stock must be subscribed to and 10% fully paid in. The said 10% must be deposited in a bank or reputable commercial house

[1] By public agreement is meant an agreement drawn up before a Notary who files the original and issues copies to interested parties. The registration of the contract is called "protocolization".

[2] *Idem.*

and turned over to the directors named in the first general assembly which shall convene as soon as the subscription to the capital stock has been made, the 10% paid in, and of course the constitution drawn up in regular form for acceptance.[3]

To organize a corporation by means of the second method, namely, when two or more persons sign the constitution or charter, the same plan is followed that is followed when a corporation is organized by public subscription, except that the organizers are only required to subscribe to the entire amount of stock and pay in the required 10% and follow the rule as to the form of public documents.

Of course, the proof of title, if property other than money is paid in, must be satisfactory. So also must there be satisfactory proof of the value of such property and the constitution must be approved and ratified at the first general assembly, and any action, contract or operation not so approved is void as to the corporation.

The subscribers to shares may not sell these shares, and if they do, such sale is null and void. The shares must be all for an equal par value unless the contrary is agreed upon in the constitution or by-laws. Shares may be sold to the order of, or to bearer and they must have the following data expressed clearly thereon: The name of the corporation and the place of business, date of organization, amount of capital stock, number of shares, duration of the corporation and the special rights granted shareholders in the constitution and by-laws. These shares shall also be signed by the number of directors specified for this purpose in the by-laws, and shall state whether they are fully paid in or assessable and if so, how much. The corporation must keep a registry of shares sold "to the order of" the purchaser and the ownership is proved by the registry,—in fact, transfer of title may only be made on the books of the corporation. "Title to bearer" shares may be transferred by the mere act of delivery.

Each share represents one vote. If the share is not fully paid

[3] There are many details as to the duties of the shareholders, etc., that are unimportant and too diversified for the scope of this paper, but by consulting the Commercial Code, Article 172, *et seq.*, such details may be studied.

in and non-assessable and demand is made on the shareholder for further installments, and such shareholder refuses further payment, the shares of stock shall be sold for the amount due and the risk of loss is on the first shareholder. A corporation cannot buy its own shares except when it uses funds not destined for use as a sinking fund and the shares that it purchases have been liberated with the authorization of the general assembly or when the by-laws have previously provided therefor, or when the capital stock of the corporation is desired to be reduced. In the first case, these shares so purchased by the corporation cannot be voted nor are they usable in the formation of a majority; and in the last two cases, the shares bought become null *ipso facto*. Any purchase of stock made by the corporation in any other manner than those specifically enumerated above, is not void unless the seller has sold in bad faith, but any loss resulting to the company because of such purchase, shall be borne by the officers or directors of the corporation who authorized the purchase. It follows also that the corporation cannot lend money on the security of their own shares.

The officers and directors of a Mexican corporation are appointed for a fixed time and are considered as agents as of the corporation. The administrators of a corporation are composed of a board of directors and one or more managers. In addition to these bodies the corporation may appoint boards in other localities which may have such powers as the by-laws give them. If there is no restriction in the by-laws the board of directors have the most ample powers to carry out the business of the corporation. The board of directors is appointed by the shareholders, but the members thereof may be named in the original instrument of organization subject always to the privilege of reelection, unless there is an agreement to the contrary. The by-laws must fix the method of appointing the board of directors. The powers given the members of a board of directors of a corporation are personal and may not be delegated.

Each director must also be a shareholder and must deposit with the corporation the number of shares designated by the by-laws as a guarantee of the performance of duty, but the directors are not generally personally liable for actions or obligations

undertaken in the name of the company, although they are so liable if they do any act in bad faith or for failure to exercise reasonable care in the performance of their duties as agents or directors of the company. The directors however may only be called to task by a general assembly of shareholders or by a person designated at a meeting of this kind. Any director who has any right or claim against the company must make such right or claim known whenever the company attempts to deal with regard to this right or claim.

In addition to the usual officers, directors and managers in a corporation, there is a peculiar form of inspector or *comisario* who has the same obligations and responsibilities as a director and who is appointed in the same manner directors are appointed, but always by the general assembly of shareholders. These *comisarios* have the most ample powers of vigilance over the acts of the corporation. They may inspect the company's books, correspondence, and in fact anything belonging to the corporation. Hence the shareholders may not exercise such powers of investigation, but they are specially delegated to the *comisario*. This is of course a very good idea because officers of the corporation are not constantly irritated by having to show the books to every shareholder that happens to want an investigation. The *comisario* must also prepare a statement as to the result of his work and investigation during the year; and the board of directors each year must submit to the *comisario* a balanced account so that the *comisario* may proceed to prove the accuracy thereof and submit to the shareholders the necessary explanations of expenditures and account of work done. The *comisarios* are controlled by the provisions fixing the responsibility of directors.

The general assembly of stockholders has the usual very ample powers of stockholders generally and may amend their by-laws as they see fit. Such general assemblies may be either ordinary or extraordinary. It is obligatory for the shareholders to hold at least one ordinary or regular meeting a year, at which meeting the following points must be dealt with: The hearing of the *comisarios* and fixing or modifying the general balance for the year; the naming and appointing of the directors and

comisarios, and the salaries each should receive; and whatever special business that might have arisen. The extraordinary assemblies or meetings may unite at any time in accordance with the by-laws of the corporation.

Notice to the shareholders of the general assembly, regular or extraordinary, must be given through the official paper of the particular state, district or territory in which the corporation is domiciled and any meetings held in violation of this provision are void.

The duty falls upon the board of directors or *comisarios* to call the meetings and give notice of such meetings in the papers and a majority of the stock must be represented at the meeting in order for such meeting to be legally called to order. But if the meeting cannot be held on the day it is called, the second call should be made at once and the program of the meeting as published must be carried out whatever may be the percentage of the capital stock represented at the second meeting. It takes the majority of the votes present at the meeting of the shareholders, who, as has been said, must be the majority owners of the capital stock, to validate a resolution or action of such general assembly.

Unless otherwise specified in the constitution or by-laws, it takes the presence of the representatives of three-fourths the capital stock and a vote of one-half of the three-fourths present to:

(1) Dissolve the corporation unless one-half of the capital stock has been lost,

(2) Prolong the duration of the corporation,

(3) Merge with another or other associations,

(4) Reduce or increase the capital stock,

(5) Change the purposes of the company,

(6) Effect any other change in the constitution or by-laws.

Sections 2, 3, 4, and 6 of the above must always, if put into use, be drawn up in a public document.

Whenever the representatives of at least one-third of the capital stock of the corporation so demand, the board of directors must call an extraordinary session or meeting of shareholders and notice must be given at least one month ahead of time. Also

there must be presented by the shareholders desiring the meeting a list of the business to be handled in the general assembly.

Shareholders may vote by proxy but members of the board of directors may not vote by proxy, nor may they vote to approve the accounts of the corporation nor may they vote any resolution involving their personal responsibility.

Dividends issued or paid by corporations may not be more than the net profits thereof, but it is permissible in the by-laws to provide that the shares may pay an interest not exceeding 6% annually and for no longer period than five years. If this agreement is made, the amount of such interest must be at once counted among the other expenses of installation, and once paid may never be recovered from the shareholder. Every year at least 5% of the net profits must be set aside as a sinking fund until such fund reaches in amount one-fifth of the par value of the capital stock and the amount of the sinking fund so formed must be published in the official newspaper of the domicile of the corporation together with a yearly balance showing the amount of capital stock, amount paid in and to be paid in, cash balance and the various funds, reserve and otherwise, of the company.

A corporation may be dissolved by consent of the stockholders (majority of the three-fourths of the capital stock present); by lapse of the period for which the company was organized; by loss of one-half the par value of the capital stock (if the dissolution is approved in a meeting by the majority of the representatives of one-half the total capital stock), and finally, by bankruptcy. The stockholders may name the receivers, but if they fail to do so, the court must do so. The appointment of receivers puts an end to the functions of the managers or other administrators, who, however, are obligated to help the receivers as much as necessary.

There are many other interesting phases of corporation law in Mexico, such as questions of practice, customs of notaries, etc., but the summary as given seems to cover the main points and a longer treatment would unnecessarily draw out the article.[4]

It is earnestly desired to point out the difference between the

[4] See generally CODIGO DE COMERCIO DE LOS ESTADOS UNIDOS MEXICANOS (Ed. 1919) *Capitulo* 5, Arts. 163 to 237, inc.

old and the new law. Whatever is covered by the New Constitution is new law; what is so concretely summarized in the Commercial Code is old law—probably at least 2000 years old. The silly efforts on the part of nearly illiterate radicals to change the law of Justinian would be ridiculous if these same radicals did not attempt to enforce them. Of course, such laws cannot live, but while they do stagger out a miserable existence, the corporation and other laws of Mexico are a discredit to this otherwise wonderful country, and all we can hope for, or despair of, is a quick change.

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